

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

ILIFE TECHNOLOGIES, INC.,	§	
	§	
Plaintiff,	§	
	§	Case No. 3:13-cv-04987
v.	§	
	§	
NINTENDO OF AMERICA INC.,	§	
	§	
Defendant.	§	

**APPENDIX IN SUPPORT OF DEFENDANT NINTENDO OF AMERICA INC.'S
REPLY IN SUPPORT OF ITS MOTION TO DISMISS OR TRANSFER
FOR IMPROPER VENUE UNDER 28 U.S.C. § 1406(a)**

EXHIBIT NO.	DESCRIPTION	APPENDIX CITATION
	Declaration of Stephen Smith in Support of Defendant Nintendo of America Inc.'s Reply In Support of Its Motion to Dismiss or Transfer for Improper Venue Under 28 U.S.C. § 1406(a)	APP0001-2
1	June 13,2017 Order (Dkt No. 106) from <i>Fusilamp, LLC v. Littelfuse, Inc.</i> , 10-20528-CIV-ALTONAGA, Doc. 106 (S.D. FL. June 12, 2017)	APP0003-5

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing **APPENDIX IN SUPPORT OF DEFENDANT NINTENDO OF AMERICA INC.'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS OR TRANSFER FOR IMPROPER VENUE UNDER 28 U.S.C. § 1406(a)** was served via CM/ECF upon all counsel of record on June 19, 2017.

/s/ Stephen R. Smith
Stephen R. Smith

**IN THE UNITED STATES DISTRICT COURT
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ILIFE TECHNOLOGIES, INC.,	§	
	§	
Plaintiff,	§	
	§	Case No. 3:13-cv-04987
v.	§	
	§	
NINTENDO OF AMERICA INC.,	§	
	§	
Defendant.	§	

**DECLARATION OF STEPHEN R. SMITH IN SUPPORT OF
DEFENDANT NINTENDO OF AMERICA INC.'S REPLY IN SUPPORT OF ITS
MOTION TO DISMISS OR TRANSFER
FOR IMPROPER VENUE UNDER 28 U.S.C. § 1406(a)**

I, Stephen R. Smith, declare:

1. I am an attorney in the law firm Cooley LLP, 1299 Pennsylvania Avenue, NW, Suite 700, Washington, DC 20004. My firm represents Defendant, Nintendo of America Inc. ("NOA") in the above-captioned matter. I make this declaration in support of Defendant Nintendo of America Inc.'s Reply In Support of Its Motion to Dismiss or Transfer for Improper Venue Under 28 U.S.C. § 1406(a).

2. I am over the age of 18, have personal knowledge of the facts in this matter, and if called upon to testify, could and would do so. I declare that the following statements are true to the best of my knowledge, information, and belief formed after a reasonable inquiry under the circumstances.

3. Exhibit 1 attached hereto is a true and correct copy of the June 13, 2017 Order (Dkt No. 106) from *Fusilamp, LLC v. Littelfuse, Inc.*, 10-20528-CIV-ALTONAGA, Doc. 106 (S.D. FL. June 12, 2017)3

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 19, 2017

/s/ Stephen R. Smith
Stephen R. Smith

EXHIBIT 1

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 10-20528-CIV-ALTONAGA

FUSILAMP, LLC, et al.,

Plaintiffs,

v.

LITTELFUSE, INC., et al.,

Defendants.

ORDER

THIS CAUSE came before the Court on Defendant, Littelfuse, Inc.’s Motion to Dismiss [ECF No. 105], filed June 9, 2017. Defendant requests the Court dismiss the action for improper venue in light of the Supreme Court’s May 22, 2017 decision in *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, No. 16-341, 2017 WL 2216934 (U.S. May 22, 2017). (*See* Mot. 1). “When [the Supreme Court] applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases *still open on direct review* and as to all events, regardless of whether such events predate or postdate our announcement of the rule.” *Harper v. Va. Dep’t of Taxation*, 509 U.S. 86, 97 (1993) (alteration and emphasis added).


On September 9, 2010, the Court issued an Order [ECF No. 103] staying the present action pending the outcome of arbitration and directing the Clerk to administratively close the case. (*See id.*). The case has been closed since that date. Although Defendant correctly states “[t]he decision in *TC Heartland* applies retroactively to all currently pending patent cases” (Mot. 3 (alteration added; citation omitted)), this is not a currently pending case.

Accordingly, it is

APP000004

ORDERED AND ADJUDGED that the Motion [ECF No. 105] is **DENIED**.

DONE AND ORDERED in Miami, Florida, this 12th day of June, 2017.



CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record